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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,921	09/22/2003	Ioana M. Rizoia	BI9100CIPCON	9901
33197	7590	04/20/2006	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			SHAY, DAVID M	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,921

Applicant(s)

RIZOIU ET AL.

Examiner

david shay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on February 8, 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

As a formal matter it is noted that the amendment to the specification does not conform with 37 CFR 121 as there is no underlining to show the material added to the first paragraph of the disclosure and newly added claims should not have underlining. However, as this appears to be an otherwise bona fide response, the amendment has been entered.

The amendment filed February 8, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the relationship between the imaging device, the cannula, and the additional tube illustrated in the new drawing figures; the incorporation by reference of the disclosures of applications other than 09/188,072; the inclusion of 60/064,465 in the continuing data; and the limitation that obstructions are not present between the cannula lumen and an area of tissue located distally of the open cannula distal end.

It is noted that the openings in the tip of Massengill provide no obstruction between the distal tip of the device and the tissue distal thereof.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 27-69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention. The originally filed disclosure is silent on "obstructions are not present between the cannula lumen and an area of tissue located distally of the open cannula distal end".

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 27-53, 60-64, and 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizioiu et al (WO '928) in combination with Massengill. Rizioiu et al teach a tissue removal device and method with hydrokinetic energy generated by the claimed lasers and using water, epinephrine and/or anesthetic as the fluid. Massengill teaches the removal of fat tissue using a cannula which delivers hydrokinetic energy to the tissue to be removed. It would have been obvious to the artisan or ordinary skill to employ the hydrokinetic energy generators and steps and fluids of Rizioiu et al (WO '928) in the method and device of Massengill, since Massengill teaches no particular laser and since the claimed fluids are equivalent and or compatible with water when generating the hydrokinetic energy, as taught by Rizioiu et al (WO '928); or to employ the cannula delivery system and steps of Massengill in the device and method of Rizioiu et al (WO '928), since Rizioiu et al (WO '928) teaches that the device and method can be used on many kinds of tissue and can include many different types of instruments; and in either case, to employ the method on and configure the device for removal of fat tissue in joints or the abdomen since these are known sites of fat tissue, official notice of which is hereby taken, to employ sterile fluids, since this prevents infection when operating on internal tissue, official notice of which is hereby taken, to construct the device from medical grade plastics, since this is a notorious material for medical devices, official notice of which is hereby taken, and to construct the device of stainless steel, since this is a notorious material for medical

devices and is inert, official notice of which is hereby taken, thus producing a device and method such as claimed.

Claims 55-59, 67-69 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizioiu et al (WO '928) in combination with Massengill as applied to claims 27-53, 60-64, and 70-74 above, and further in combination with Kittrell et al. Kittrell et al teach a tissue removal device with imaging capabilities. It would have been obvious to the artisan of ordinary skill to provide the infrared imaging device of Kittrell et al. in the device of Rizioiu et al (WO '928) in combination with Massengill since this would enable the surgeon to assure that the tissue is kept at a safe temperature, since this will minimize the damage to nerves and blood vessels, thus producing a device such as claimed.

Applicant's arguments filed February 8, 2006 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on Monday through Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

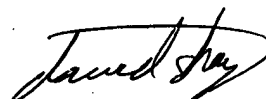
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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